

No. 13-0285 BN

This Commission convened a hearing on the complaint on August 26, 2013. Cross appeared *pro se*. Ian Hauptli, Legal Counsel, represented the Board. The matter became ready for our decision on November 15, 2013, when Cross's written argument was due.

## **Findings of Fact**

1. Cross was licensed by the Board as an LPN from March 6, 2006 until her license expired on May 31, 2012.
2. On August 11, 2008, Cross pled guilty in the Circuit Court of St. Clair County, Illinois, to the class C misdemeanor of disorderly conduct.<sup>1</sup>
3. On August 11, 2008, Cross pled guilty in the Circuit Court of St. Clair County, Illinois, to the class A misdemeanor of obstructing a peace officer.<sup>2</sup>
4. In 2009, Cross applied for renewal of her license as an LPN and failed to disclose her 2008 guilty pleas. The Board renewed her license.
5. On May 3, 2012, Cross pled guilty in the Circuit Court of St. Louis County, Missouri, to the class A misdemeanor of unlawful use of a weapon.<sup>3</sup> This guilty plea was based on Cross's exhibiting a knife in the presence of one or more persons.
6. On October 9, 2012, the Board received Cross's application for renewal of her license as an LPN. On her 2012 application for renewal, Cross again failed to disclose her 2008 guilty pleas.
7. At the time of submitting her 2010 application for renewal, Cross smoked marijuana for which she did not have a prescription.
8. On January 9, 2013, the Board denied renewal and informed Cross of this decision in a letter dated January 22, 2013.

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<sup>1</sup> 720 ILCS 5/26-1(a)(1).

<sup>2</sup> 720 ILCS 5/31-1(a).

<sup>3</sup> Section 571.030.1(1), RSMo Supp. 2010. Missouri statutory references are to RSMo, Supp. 2013 unless otherwise noted.

## Conclusions of Law

We have jurisdiction to hear the case.<sup>4</sup> Cross has the burden of proving she meets all of the underlying qualifications for licensure.<sup>5</sup> The Board has the burden of proving that Cross has committed an act for which the law allows discipline, and thus allows for denial of renewing Cross's license.<sup>6</sup> The appeal vests in this Commission the same degree of discretion as the Board, and we need not exercise it in the same way.<sup>7</sup>

When an applicant for licensure files a complaint, the Board's answer provides notice of the grounds for denial of the application.<sup>8</sup> In the present case, in its answer, the Board alleged Cross failed to disclose her 2008 guilty pleas on her 2010 application for renewal, but presented no evidence to support this allegation at the hearing. Also in its answer, the Board alleged Cross pled guilty to possession of a controlled substance on May 12, 2011, in the Municipal Court of the City of Berkeley, Missouri, but presented no evidence to support this allegation at the hearing.

The Board alleges there is cause to deny renewal of Cross's license under § 335.046<sup>9</sup> and § 335.066.1 and .2(2), (3), and (14),<sup>10</sup> which provide:

335.046.2. An applicant for license to practice as a licensed practical nurse ... shall be of good moral character[.]

\* \* \*

335.066.1. The board may refuse to ... reinstate any ... license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section[.]

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<sup>4</sup>Section 621.045.

<sup>5</sup>Section 621.120, RSMo 2000.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>7</sup>*State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).

<sup>8</sup>*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

<sup>9</sup>RSMo 2000.

<sup>10</sup>RSMo Supp. 2012.

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335.066.2. The board may cause a complaint to be filed with the administrative hearing commission . . . for any one or any combination of the following causes:

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(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to sections 335.011 to 335.096 or in obtaining permission to take any examination given or required pursuant to sections 335.011 to 335.096;

\* \* \*

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

#### Good Moral Character - § 335.046

“Good moral character” is honesty, fairness, and respect for the rights of others and for the laws of the state and nation.<sup>11</sup> Cross failed to display honesty when she failed to disclose her 2008 guilty pleas on her 2009 and 2012 applications for renewal. Having failed to be of good moral character, Cross does not meet all of the underlying qualifications for licensure as an LPN.

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<sup>11</sup>*Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

### Guilty Pleas – Subdivision (2)

Cross pled guilty to three crimes: disorderly conduct, obstructing a police officer, and unlawful use of a weapon. The elements of each crime are described in the following statutes:

720 ILCS 5/26-1(a) A person commits disorderly conduct when he or she knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace[.]

\* \* \*

720 ILCS 5/31-1(a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer ... of any authorized act within his or her official capacity commits a Class A misdemeanor.

\* \* \*

571.030.1.<sup>12</sup> A person commits the crime of unlawful use of weapons if he or she knowingly:

(1) Carries concealed upon or about his or her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use[.]

Reasonable relation is a low threshold. To relate is to have a logical connection.<sup>13</sup> The Board alleges that all three of these crimes are cause for discipline, and, therefore denial, under this subdivision because they involve disrespect for the rights of others and for the laws of the state, which in turn are reasonably related to the qualifications of nursing. The commission of any crime shows disrespect for the laws of the state. Under the Board's reasoning, there would be no need for the inclusion of:

...for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096...

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<sup>12</sup> RSMo Supp. 2010.

<sup>13</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11<sup>th</sup> ed. 2004).

into subdivision (2) because the commission of any crime, in and of itself, would be reasonably related to the qualifications, functions or duties of an LPN. Therefore, we reject this argument.

The duties of an LPN include:

...the promotion of health and in the care of persons who are ill,  
injured, or experiencing alterations in normal health processes.<sup>[14]</sup>

Without more detailed explanation by the Board, we cannot make the logical connection between the qualifications, functions, or duties of an LPN and the respect for the rights of others with the crimes of disorderly conduct or obstruction of a peace officer. However, it is clear that an LPN must care for persons, and the carrying of a concealed weapon, in an unlawful manner, is contrary to this duty of an LPN. Therefore, solely for the crime of carrying a concealed weapon, we find there is cause to deny Cross renewal of her license as an LPN under §§ 335.066.1 and .2(2).

### Misrepresentation – Subdivision (3)

The Board alleges Cross committed a misrepresentation on her 2009 renewal application by omitting her 2008 guilty pleas.

Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.<sup>15</sup> Cross made such a falsehood when she failed to disclose her guilty pleas, as requested, on her 2009 renewal application. Therefore, Cross made a misrepresentation. This misrepresentation, in turn, led to the renewal of Cross's license that year. Therefore, Cross obtained her license renewal by committing a misrepresentation. There is cause to deny renewal of her license under §§ 335.066.1 and .2(3).

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<sup>14</sup> Section 335.016(14).

<sup>15</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11<sup>th</sup> ed. 2004).

### Violation of Drug Laws – Subdivision (14)

Cross admitted to smoking marijuana. Marijuana is a Schedule I controlled substance<sup>16</sup> and Cross did not have a prescription for it. Section 195.202 provides:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Cross unlawfully possessed the marijuana in violation of § 195.202. Therefore, there is cause to deny renewal of her license under § 335.066.1 and .2(14).

### Discretion

As stated above, the appeal vests in this Commission the same degree of discretion as the Board, and we need not exercise it in the same way. However, after reviewing the evidence, we agree with the Board and deny Cross's application for renewal of her license as an LPN. Furthermore, while we may exercise discretion for causes to deny under §§ 335.066.1 and .2, we have no discretion in the inability to renew a license when the applicant fails to meet all qualifications of licensure. Here, Cross failed to meet those qualifications under § 335.046.

### **Summary**

We deny Cross's application for license renewal under § 335.046 and § 335.066.1 and .2(2), (3) and (14).

SO ORDERED on April 3, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>16</sup> Section 195.017.2(4)(w).